

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* RICHARD S. CHOMIK, JOSEPH CLARK, and  
FRANCIS X. MANGANIELLO

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Appeal 2007-0792  
Application 09/639,508  
Technology Center 3700

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Decided: June 14, 2007

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Before TEDDY S. GRON, JAMESON LEE, and CAROL A. SPIEGEL,  
*Administrative Patent Judges.*

GRON, *Administrative Patent Judge.*

DECISION ON APPEAL

Introduction

This is a decision on appeal under 35 U.S.C. § 134 from an Examiner's final rejection of Claims 14-16 of Application 09/639,508, filed August 16, 2000, under 35 U.S.C. § 102(b) as described by Greenwood,

U.S. Patent 5,499,729, issued March, 19, 1996. Claims 14-40 are pending in the application. The Examiner objected to Claims 18-20 and 24-26 as being dependent on a finally rejected claim yet allowable in independent form.

Claims 17, 21-23, and 27-40 have been withdrawn from further consideration. Finally rejected Claims 14-16 are transcribed below (Appeal Br. app. A):

14. A method of forming a plurality of apertures in a concavely curved domed portion of a vent disc, said plurality of apertures each having centerlines, which comprises:

forming said plurality of apertures with each of said centerlines coincident to a radius that forms a concave curvature of said domed portion, wherein said plurality of apertures have at least two different diameters through said domed portion, wherein said plurality of apertures are resealable, and wherein said domed portion is elastomeric.

15. The method of Claim 14, further comprising forming a portion of each of said plurality of apertures with a hemispherical shape.

16. A method of forming a plurality of perforations in a concavely curved domed portion of a vent disc, which comprises:

forming a plurality of upwardly extending depressions in an undersurface of said domed portion while leaving a residual of said domed portion above said plurality of depressions, said plurality of depressions each having a centerline, each of said centerlines being coincident with a radius that forms a concave curvature of said domed portion; and

forming a plurality of perforations through said residual, said plurality of perforations being resealable and each having a centerline, each of said centerlines of said plurality of perforations being formed

coincident to a corresponding centerline of one of said plurality of depressions, wherein said domed portion is elastomeric.

Appellants state that Claims 14 through 16 stand or fall together (Appeal Br. p.8, VII). Therefore, we decide this appeal on the basis of Claim 14. 37 CFR § 41.37(c)(1)(vii) (2006).

### Discussion

The claims on appeal relate to “vent disks that alleviate the vacuum created in containers, such as infant feeding bottles, during feeding” (Specification p. 1, ll. 16-18). Specifically, the claims are directed to methods of making these disks.

Vent disks were known and had proven to be effective in alleviating the vacuum created in containers during use, while preventing leakage (Specification p. 1, ll. 25-31). Essentially, an ideal vent disk allows air to flow into a container during use, but it does not allow fluid to leak out of the container when not in use. The claims on appeal attempt to define methods for making an improved vent disk that does not leak when in contact with a liquid (Specification p. 2, ll. 5-10).

In deciding this appeal, we have considered the claims on appeal, the Final Rejection, the Appeal Brief, the Examiner’s Answer, and the Reply

Brief. We have studied Applicants' Specification and Drawings and the whole of Greenwood, U.S. Patent 5,499,792.

“For a prior art reference to anticipate in terms of 35 U.S.C. § 102, every element of a claimed invention must be identically shown in a single reference.” *In re Bond*, 910 F.2d 831, 832, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990); *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988). Anticipation can be found when a claim limitation is inherent or otherwise implicit in the relevant reference. *Standard Havens Products, Inc. v. Gencor Industries, Inc.*, 953 F.2d 1360, 1369, 21 USPQ2d 1321, 1328 (Fed. Cir. 1991). Thus, to affirm the Examiner's rejection in this case, each and every aspect of Applicants' Claim 14, either explicitly or implicitly, must be described by Greenwood.

Claim 14 has a number of aspects, most of which are undisputedly disclosed by Greenwood. Referring to Figures 1-3, Greenwood discloses (Greenwood, col. 4, ll. 23-36; emphasis added):

The bottle structure **20** incorporates a thickened elastomeric diaphragm member **42** having a plurality of apertures that extend therethrough. The diaphragm **42** has circumferential edge portions **46** that are sealingly associatable within the other one of said cap members, here cap member **29**, so as to be axially adjacent the hole **37** thereof when cap member **29** is fully threadably engaged with its associated lip region **27**. The apertures **43** are in a sealed shut configuration when the diaphragm member **42** is relaxed and are in an open

configuration when the diaphragm member is expanded responsive to applied gas pressure.

The diaphragm can be flattened, but preferably (as shown), the diaphragm member **42** has a dome-configured central portion 44 with opposed concave and convex faces.

Additionally, Greenwood's Figure 17 shows that each of the plurality of apertures has two different diameters.

The only question of concern here is whether Greenwood discloses, either explicitly or implicitly, that its apertures are formed with "centerlines coincident to a radius that forms a concave curvature of [the] domed portion" (Appeal Br. app. A).

The specific language of Claim 14 requires "forming said plurality of apertures with each of said centerlines coincident to a radius that forms a concave curvature of said domed portion" (Appeal Br. app. A). The key phrase here is "centerlines coincident to a radius," with the important word being "coincident." Whether Greenwood describes this feature is dependent upon the meaning of the term "coincident."

Generally, "in proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification." *In re Sneed*, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). However, here the Specification does not explicitly define the

term “coincident.” Therefore, it is necessary to interpret the phrase “centerlines coincident to a radius” based on the claim language itself and the teaching of the Specification as a whole.

“[C]enterlines coincident to a radius,” construed according to its broadest reasonable interpretation in light of the specification, means the centerlines are aligned with a corresponding radius extension of the domed portion of the disk. That means an extension of the radius drawn to an aperture would fit entirely within the aperture. A broader interpretation would not be meaningful as any centerline through the aperture would necessarily intersect a radius extending to the aperture.

Given the broadest reasonable interpretation of the critical phrase, the example of one of the plurality of apertures in the dome configured diaphragm member depicted in Greenwood’s Figure 17 reasonably appears to be identical to one of the plurality of apertures in the curved domed portion of a vent disk within the scope of Applicants’ claims. Greenwood’s Figure 17 depicts an aperture that reasonably appears to contain the radius of the curvature of the domed portion of the disk throughout its thickness.

Appellants state that “the Examiner’s Answer erroneously relies on assumptions based on geometric representations in Figure 17 in order to substantiate that the claimed invention is disclosed in Greenwood” (Reply

Br. p. 2). While there are no specific geometries stated for Figure 17, the drawing nevertheless reasonably appears to describe an aperture with a centerline “coincident to a radius that forms a concave curvature of said domed portion” (Appeal Br. app. A). The description of an element of the claims for the purposes of anticipation can be met by drawings alone, as well as words. *In re Mraz*, 455 F.2d 1069, 1072, 173 USPQ 25, 27 (CCPA 1972); *In re Wilson*, 312 F.2d 449, 454, 136 USPQ 188, 192 (CCPA 1963); *In re Bager*, 47 F.2d 951, 952-953, 8 USPQ 484, 486 (CCPA 1931). Drawings are evaluated “on the basis of what they reasonably disclose or suggest to one skilled in the art.” *In re Aslanian*, 590 F.2d 911, 914, 200 USPQ 500, 503 (CCPA 1979).

Given the broadest reasonable definition of the term “coincident” in Claim 14, we find that Greenwood describes the step of “forming said plurality of apertures with each of said centerlines coincident to a radius that forms a concave curvature of said domed portion” of Claim 14.

Accordingly, Greenwood describes each and every claim limitation in the method Applicants claim and anticipates the claimed subject matter as a whole.

Conclusion

Having considered all the evidence of record for and against the patentability of Claims 14-16 of Application 09/639,508 under 35 U.S.C. § 102(b), we affirm the appealed final rejections.

Order

Upon consideration of the appeal, and for the reasons given, it is

ORDERED that the decision of the Examiner rejecting Claims 14-16 of Application 09/639,508 under 35 U.S.C. § 102(b) is affirmed; and

FURTHER ORDERED that the time for taking future action in this appeal cannot be extended under 37 CFR § 1.136(a)(2006).

AFFIRMED



Appeal 2007-0792  
Application 09/639,508

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